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Extrajudicial, summary or arbitrary executions

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, submitted in accordance with Assembly resolution 65/208.

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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

Summary

In States in which the death penalty continues to be used, international law imposes stringent requirements that must be met for it not to be regarded as unlawful. In the present report, the Special Rapporteur considers the problem of error and the use of military tribunals in the context of fair trial requirements. He also examines the constraint that the death penalty may be imposed only for the most serious crimes: those involving intentional killing. Lastly, he considers the issues of collaboration and complicity, in addition to transparency in respect of the use of the death penalty.

Contents

		Page
I.	Introduction	3
II.	Activities of the Special Rapporteur	3
	A. International and national meetings	3
	B. Visits	4
III.	Restrictions on the death penalty	4
	A. Introduction	4
	B. Fair trial guarantees	7
	C. Most serious crimes	8
	D. Collaboration and complicity	14
	E. Transparency	19
IV.	Conclusions	23
V.	Recommendations	23
	A. Retentionist States	23
	B. Abolitionist States	24
	C. All States	24
	D. International organizations	24
	E. Non-governmental organizations	25

I. Introduction

1. The present report provides an overview of the activities carried out by the Special Rapporteur since the submission of his report to the General Assembly at its sixty-sixth session (A/66/330). In section III, he focuses on specific issues of concern and areas for international engagement regarding the imposition of the death penalty.

II. Activities of the Special Rapporteur

2. The activities carried out by the Special Rapporteur from 1 January 2011 to 15 March 2012 are outlined in his report to the Human Rights Council at its twentieth session (A/HRC/20/22). In the thematic section of that report, the Special Rapporteur focused on the protection of the right to life of journalists.

A. International and national meetings

3. On 6 June 2012, the Special Rapporteur gave an address at an event about his mandate, organized by the American Society of International Law in Washington, D.C.

4. On 7 June, he spoke at a conference on protecting the right to freedom of expression, organized by the Academy on Human Rights and Humanitarian Law of American University in Washington, D.C.

5. From 13 to 15 June, he attended the nineteenth annual meeting of special rapporteurs, representatives, independent experts and chairpersons of working groups of the Human Rights Council, held in Geneva.

6. During the twentieth session of the Human Rights Council, held from 18 June to 6 July, the Special Rapporteur participated in several side events. He was a panellist during the side event on the theme "Protection of journalists: United Nations and regional approaches for better protection", organized by the Permanent Mission of Austria to the United Nations Office and other international organizations in Geneva, on 20 June. On 21 June, he took part in a side event on States' responsibilities in the promotion and protection of human rights in the context of peaceful protests, organized by the Permanent Mission of Switzerland to the United Nations Office and other international organizations in Geneva. He gave addresses at two additional events: one on the human rights implications of targeted killings, organized jointly by the American Civil Liberties Union, the Center for Constitutional Rights, the International Commission of Jurists and the International Federation for Human Rights, and the other on extrajudicial executions in Colombia, organized by the Colombian Commission of Jurists and the International Federation for Human Rights.

7. On 25 and 26 June, the Special Rapporteur organized an expert consultation on the death penalty to inform the present report, jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, held at Harvard Law School, United States of America. He expresses thanks to all the participants for their assistance in the preparation of the present report, in particular Tess Borden.

8. On 3 July, he participated in a global panel on the theme "Moving away from the death penalty — lessons learned from national experience", organized by the Office of the United Nations High Commissioner for Human Rights, in New York.

B. Visits

9. During the period under review, the Special Rapporteur visited India from 19 to 30 March 2012, at the invitation of the Government. His report on that mission will be submitted to the Human Rights Council in 2013.

10. Since his previous report to the General Assembly, the Special Rapporteur has sent visit requests to Libya, Pakistan, the Syrian Arab Republic and Turkey. He has also reiterated his interest in carrying out a visit to Sri Lanka. The Special Rapporteur thanks the Governments of Mexico and Turkey for having responded positively to his requests. He further encourages the Governments of Thailand and Uganda to accept his previous requests to visit.

III. Restrictions on the death penalty

A. Introduction

11. The right to life is the precondition for the full realization of human dignity and the effective exercise of all human rights. The prohibition on arbitrary deprivation of life is part of customary international law and was recognized by the Human Rights Committee in its general comment No. 24 as a peremptory norm or *jus cogens*, signalling that it cannot be overridden by other norms (CCPR/C/21/Rev.1/Add.6, para. 10). Article 3 of the Universal Declaration of Human Rights states that everyone has the right to life, liberty and security of person, while article 6 (1) of the International Covenant on Civil and Political Rights provides that every human being has the inherent right to life, which is to be protected by law, and that no one is to be arbitrarily deprived of his life.

12. Life is the supreme right and the ultimate metaright, since no other right can be enjoyed without it. The protection of the right to life is not merely a matter of domestic concern; the equal protection of all lives is central to the international human rights system.

13. For States in which the death penalty continues to be used, international law imposes stringent requirements that must be met for judicial killing not to be regarded as an arbitrary deprivation of life and therefore unlawful. These requirements were elaborated by the Economic and Social Council in its resolution 1984/50 on safeguards guaranteeing protection of the rights of those facing the death penalty.

14. The requirement of non-arbitrariness in the context of the death penalty has a procedural component, centred on the requirements of legality and fair trial. It also has a substantive component that entails, among other requirements, imposition only for the most serious crimes, minimum standards of protection for vulnerable groups, and equality and consistency.

15. In its resolution 17/5, the Human Rights Council requested the Special Rapporteur to continue to monitor the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

16. In the present report, the Special Rapporteur focuses on selected issues of concern regarding the current use and status of the death penalty worldwide. He considers, at the procedural level, the problem of error and of military tribunals, which are concerns in respect of fair trial guarantees. He then turns to substantive issues and deals with the requirements that the death penalty be imposed only for the most serious crimes and not involve mandatory sentencing. This is followed by consideration of two broader issues: collaboration and complicity of States and other entities in the imposition of the death penalty; and the requirement of transparency.

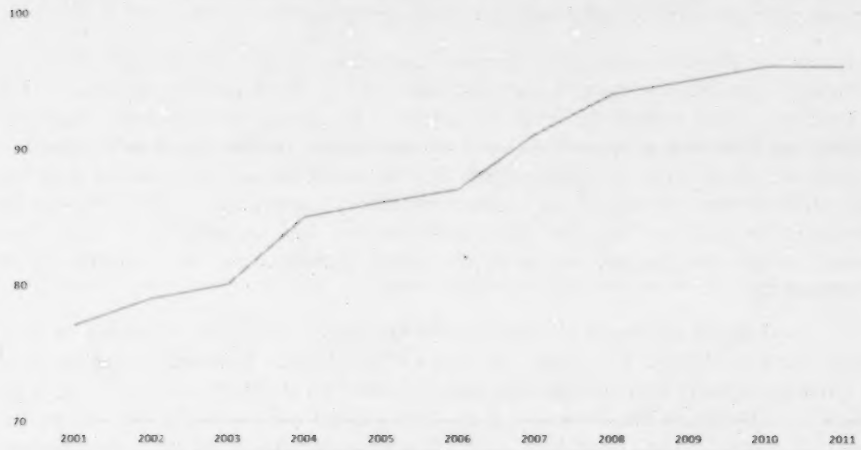
17. Most States no longer provide for the imposition of the death penalty in their legal systems. Of the 193 States Members of the United Nations, 94 do not have capital punishment in their legal systems. A further 49 States are considered to be de facto abolitionist in the sense that they have carried out no executions during the past 10 years. In total, therefore, only 50 States are considered to be retentionist, while 143 are abolitionist either in law or practice. In January 2012, Latvia became abolitionist for all crimes. During 2011, the number of countries that performed executions fell to 21. In many States whose laws allow for the death penalty, it plays only a symbolic role.

18. In the United States, five states recently abolished the death penalty, bringing the total number of abolitionist states to 17, of a total of 50. A referendum on abolition is pending in California.

19. In a number of countries, the crimes for which people may be executed have been restricted. Similarly, there is a trend away from mandatory death sentence regimes.

20. The legal space and public opinion surrounding the death penalty in all but a handful of countries have moved over the decades towards greater restrictions on the death penalty, including to the point of abolition (see figure I).

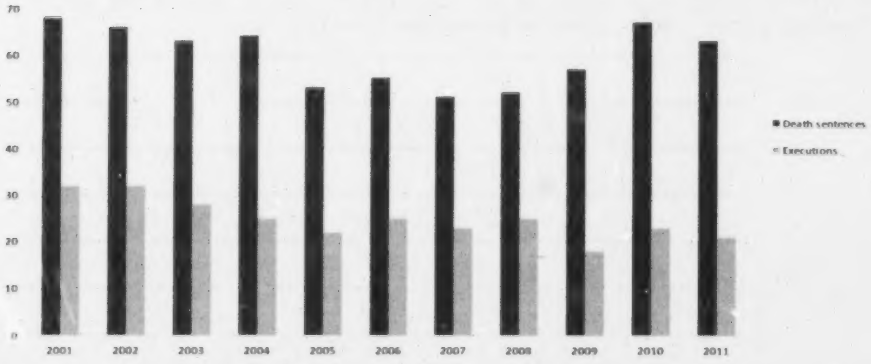
Figure I
Number of countries abolitionist for all crimes (2001-2011)



Source: Data derived from Amnesty International, *Death Sentences and Executions in 2011* (London, 2012).

21. For those countries that retain the death penalty in law, it is important to note the difference between figures for death sentences judicially imposed compared to actual executions (see figure II).

Figure II
Number of countries imposing death sentences and carrying out executions (2001-2011)



Source: Data derived from Amnesty International, *Death Sentences and Executions in 2011* (London, 2012).

22. The General Assembly, the Council of Europe, the Organization for Security and Cooperation in Europe, the African Commission on Human and Peoples' Rights and, in August 2012, the Inter-American Commission on Human Rights have called for moratoriums on the use of the death penalty.

23. Those calls notwithstanding, the death penalty remains a reality. In many cases, domestic law and practice run counter to international standards, while in others the information needed to make this assessment is kept secret.

24. Some current issues in respect of the death penalty are addressed below.

B. Fair trial guarantees

25. It is arbitrary to impose the death penalty where the proceedings do not adhere to the highest standards of fair trial. Pursuant to article 6 (2) of the International Covenant on Civil and Political Rights and general comment No. 6 of the Human Rights Committee, the death penalty may be imposed only in accordance with law not contrary to the provisions of the Covenant and pursuant to a final judgement rendered by a competent court. Furthermore, proceedings must include all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the Covenant. According to the Committee in *Reid v. Jamaica*, a violation of article 14 standards in a case where a sentence of death is imposed also constitutes a violation of article 6 (see CCPR/C/51/D/355/1989).

26. The standards of fair trial are well established and documented under international law and will not be repeated here. Rather, two issues that highlight the importance of fair trial guarantees in this context will be examined.

1. Problem of error

27. Increasingly, evidence is emerging that innocent people are sentenced and even put to death. When such evidence results in exonerations, these developments should be heralded. Such failures of justice, however, point to the reality that the levels of stringency with which fair trial standards are applied are often inadequate to protect the innocent.

28. A compelling example can be seen in the United States, where sophisticated methods of evidence-gathering, such as DNA analysis, are available. Since 1973, 140 people have been exonerated from death row in 26 states.[1] From 1973 to 1999, there were on average 3.03 exonerations for capital crimes each year. With the advent of more advanced technology, on average five people sentenced to death have been exonerated each year since 2000.[2] Since the first exoneration through DNA testing in 1993, 17 people in the United States have been exonerated by this technology specifically.[2]

29. While the availability of technology in the United States may enable exonerations in some cases before it is too late, very few countries that resort to the death penalty on a large scale have access to such resources. This raises the question

[1] See www.deathpenaltyinfo.org/innocence-list-those-freed-death-row.

[2] See www.deathpenaltyinfo.org/innocence-and-death-penalty.

of how many innocent people around the world have been executed or may currently be among the estimated 18,750 people on death row.[3]

2. Military jurisdictions

30. From the perspective of fair trial standards, the imposition of the death penalty, especially on civilians, by military courts and tribunals represents a worrying trend. In paragraph 22 of its general comment No. 32, the Human Rights Committee noted that the trial of civilians in military courts might raise serious problems as far as the equitable, impartial and independent administration of justice was concerned. Principle 5 of the Basic Principles on the Independence of the Judiciary provides that everyone is to have the right to be tried by ordinary courts using established legal procedures. The Working Group on Arbitrary Detention has concluded that military justice systems should be prohibited from imposing the death penalty under all circumstances (E/CN.4/1999/63, para. 80).

31. In many instances, military jurisdictions circumvent basic fair trial guarantees, including by not allowing individuals adequate preparation of their defence. In paragraph 6 of its general comment No. 32 (CCPR/C/GC/32), the Human Rights Committee reaffirmed that the guarantees enshrined in article 14 of the International Covenant on Civil and Political Rights were applicable to common and exceptional jurisdictions of a civil and military character and that:

> The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights. Thus, for example, as article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of article 14.

32. In recent years, the actual or potential use of the death penalty by such tribunals has been reported to be problematic in Bahrain, the Democratic Republic of the Congo, Egypt, Lebanon, the Occupied Palestinian Territory, Somalia and the United States.

33. Military or other special jurisdictions are ill suited to ensuring full compliance with fair trial standards as required in capital cases (E/CN.4/1996/40, para. 107). They should not have the power to impose sentences of death on anyone.

C. Most serious crimes

1. Background

34. A key determinant of the scope of the legitimate use of the death penalty is the range of crimes for which it may be imposed. Pursuant to article 6 (2) of the International Covenant on Civil and Political Rights, in countries which have not abolished the death penalty, a sentence of death may be imposed only for the most serious crimes.

35. The scope of article 6 (2) has been articulated restrictively. The first of the safeguards guaranteeing protection of the rights of those facing the death penalty

[3] Amnesty International, *Death Sentences and Executions in 2011* (London, 2012).

(see para. 13) provides that capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. The Human Rights Committee has found the imposition of the death penalty for crimes that do not result in loss of life incompatible with the Covenant (CCPR/C/79/Add.25, para. 8). As clarified by a previous mandate holder, these conclusions have been reflected in the current international legal interpretation of the term "most serious crimes" as limited to crimes involving lethal intent and resulting in death — in other words, intentional killing (A/HRC/4/20, paras. 54-62 and 66).

36. The Commission on Human Rights and the Human Rights Committee have determined that the following offences do not meet the "most serious crimes" threshold: abduction not resulting in death (CCPR/CO/72/GTM, para. 17), abetting suicide (A/50/40, para. 449), adultery (CCPR/C/79/Add.25, para. 8), apostasy (CCPR/C/79/Add.85, para. 8), corruption (CCPR/C/79/Add.25, para. 8), economic crimes (CCPR/C/79/Add.1, para. 5; CCPR/C/79/Add.25, para. 8), the expression of conscience (resolution 2005/59 of the Commission on Human Rights, para. 7 (f)), financial crimes (ibid.), embezzlement by officials (CCPR/C/79/Add.85, para. 8), evasion of military service (CCPR/C/79/Add.84, para. 11), homosexual acts (CCPR/C/79/Add.85, para. 8), illicit sex (ibid.), sexual relations between consenting adults (resolution 2005/59 of the Commission on Human Rights, para. 7 (f)), theft or robbery by force (CCPR/C/79/Add.85, para. 8; CCPR/CO/83/KEN, para. 13), religious practice (resolution 2005/59 of the Commission on Human Rights, para. 7 (f)) and political offences (CCPR/C/79/Add.101, para. 8). The Committee has also found that drug-related offences do not qualify (A/50/40, para. 449; A/55/40, para. 464).

37. According to an August 2012 review of statistics assembled for the current report by Death Penalty Worldwide,[4] based on the available information, all retentionist States and all but two de facto abolitionist States have legislation that provides for the death penalty for crimes not resulting in death. A total of 38 of 44 retentionist States and 33 of 49 de facto abolitionist States have legislation prescribing the death penalty for crimes resulting in death but where there was no intent to kill. This apparent discrepancy necessitates a closer consideration of the basis for the international standard that only intentional killing fits the definition of "most serious crimes".

2. Interpretation

(a) International nature of the norm

38. As part of an international treaty, the term "most serious crimes" should be understood as an international standard applicable to all States. States cannot claim compliance with article 6 (2) merely because the crime is seen as serious in their specific context. This consideration rules out such moral crimes as apostasy and homosexual conduct. In most countries these are not crimes at all, let alone viewed as "most serious crimes". Inasmuch as an international standard is meant to reflect international consensus, it is noteworthy that several States are questioning the appropriateness of using the criminal law model for drug control.

[4] Death Penalty Worldwide, paper presented at an expert consultation to inform the preparation of the present report, Cambridge, United States, 25 and 26 June 2012.

(b) Article 6 (2) as an exception

39. It is clear from the structure of article 6 that article 6 (2) constitutes an exception to the provisions of article 6 (1). Article 6 (1) protects the right to life in general terms, while article 6 (2) provides limited circumstances in which States may deviate from those terms. The understanding of article 6 (2) as an exception is supported by the inclusion of article 6 (6), which states that nothing in the article is to be invoked to delay or prevent the abolition of capital punishment by any State party to the Covenant.[5]

40. The history of the provision demonstrates that article 6 (2) was contemplated as an exception. The term "most serious crimes" is, according to one death penalty scholar, "a product of its time" and "a 'marker' for the policy of moving towards abolition through restriction". At the time of adoption of the Covenant, States expected the category of permissible capital offences to narrow over the years, meaning that they could not enumerate those offences without limiting any future development.[6]

41. In 1971, the General Assembly adopted resolution 2857 (XXVI), in which it reinforced the idea of narrowing over time by calling for the progressive restriction of the number of offences for which the death penalty might be imposed.

42. The objective of progressive restriction must inform contemporary interpretations of what is permissible under article 6 (2).[6] Such evaluation must take into account both State practice and the evolution of the human rights system itself, wherein norms that offer further protection and conceptualization of the constituent rights have developed over the years. Capital crimes introduced after the entry into force of the Covenant, such as capital drug offences, should consequently be viewed with particular circumspection.

43. It is a matter of concern that a few States continue with a policy of broadening offences punishable by death. For example, in 2011, a new penal law for terrorism crimes and financing of terrorism was presented for consideration in Saudi Arabia, containing 27 offences punishable by death. In Bangladesh, a bill to amend the Anti-Terrorism Act of 2009 was adopted by the parliament in February 2012, introducing the death penalty for financing of terrorism and other offences.

44. There have also been welcome recent developments that reduce the scope of offences punishable by death. In February 2011, a law was adopted in China to remove the death penalty for 13 non-violent crimes, of 68 crimes punishable by death, and banned capital punishment for offenders over the age of 75. In June 2012, the Emir of Kuwait refused to sign a bill passed by the parliament providing for the death penalty for specific religious offences.

(c) Role of State practice

45. Given the room for progressive restriction built into article 6 (2), State practice must be considered in order to understand the current permissible scope of the "most serious crimes" provision. This approach is grounded in the normative

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[5] William A. Schabas, *The Abolition of the Death Penalty in International Law*, 3rd ed. (Cambridge, United Kingdom, Cambridge University Press, 2002), p. 68.

[6] Roger Hood, "The enigma of the 'most serious' offences", Center for Human Rights and Global Justice Working Paper, No. 9 (New York, NYU School of Law, 2006), p. 3.

framework of customary international law and in general principles of treaty interpretation (see article 31 (3) (b) of the Vienna Convention on the Law of Treaties).

46. State practice in the context of the most serious crimes should be established not only by considering legislative provisions, but also by looking at the crimes for which executions are currently carried out in practice. That States describe a particular crime as a capital offence in their statute books, but in practice have it there largely for symbolic reasons and do not execute anyone for it, spoils rather than supports an argument that it is acceptable to execute for that crime.

47. State practice in respect of intentional killing suggests that retentionist States regard it as falling within the category of "most serious crimes": all States that continue to carry out executions find it acceptable to do so for intentional killing. As measured by State practice, however, there is no consensus among States to support the death penalty for crimes that do not involve lethal intent and that do not result in death, such as drug-related offences or economic crimes. In reality, many of these death-eligible crimes are not prosecuted by retentionist States as capital offences and/or death sentences are not handed down for them. Even fewer States actually carry out executions for these offences.

48. According to the above-mentioned study by Death Penalty Worldwide, there are confirmed executions from 2008 to date for crimes other than intentional killing in only 16 of 44 retentionist States. Of the 21 most active retentionist States (those that carried out executions in 2011), there are confirmed executions for crimes other than intentional killing in only 12 since 2008.

49. Insofar as a consensus can be established, it is significant that most retentionist States, probably 28 of 44, appear to carry out executions only for crimes involving lethal intent and resulting in death. This consensus is further extended by the 49 de facto abolitionist countries that clearly do not carry out executions for other crimes. Consequently, 77 of 93 States that are permitted to carry out executions under their national law do not in fact do so for crimes that do not constitute intentional killing.

50. To the extent that available figures allow broad outlines to be drawn, it appears that, in practice, States may be aligning with the international legal interpretation of the term "most serious crimes" as contemplating only intentional killing.

(d) Drug-related offences

51. Currently, 32 States have laws providing for the death penalty for drug-related offences. This total has been decreasing over the past decade.[7] As suggested earlier, few States impose death sentences for these crimes and even fewer actually carry out executions for them. Nevertheless, it is alarming that the States that do resort to the death penalty for these offences sometimes do so with high frequency. A small group of States is responsible for the vast majority of death sentences and executions for drug-related offences worldwide: China, the Islamic Republic of Iran, Saudi Arabia and Viet Nam, followed by, to a lesser extent, Malaysia and Singapore. Some States reportedly carry out more executions for drug-related offences than for

[7] International Harm Reduction Association, *The Death Penalty for Drug Offences: Global Overview 2011* (London, 2011).

any other type of offence. For example, executions for drug-related offences in the Islamic Republic of Iran reportedly increased sixfold from 2008 to 2010 and currently comprise between 85 and 90 per cent of the State's total executions.[7]

52. The number of executions for drug-related offences in China is a State secret but is believed to be high.[8] Viet Nam likewise claims execution numbers as secret, but it is reported that most death sentences from 2007 to 2010 were imposed for drug-related offences.[7] In Malaysia, actual execution numbers are not publicly available. In 2011, however, it was reported that 479 of 696 prisoners on death row had been sentenced to death for drug-related crimes.[7]

53. In addition to these six high-application States, seven low-application States have resorted to death sentences and sometimes executions for drug-related offences in a number of cases in the past five years: Egypt, Indonesia, Kuwait, Pakistan, the Syrian Arab Republic, Thailand and Yemen.[7]

54. While the above 13 States impose death sentences and, in some cases, carry out executions, 14 others have legislation prescribing the death penalty for drug-related offences but have never or have not for many years resorted to it. Lastly, while the Democratic People's Republic of Korea, Iraq, Libya and the Sudan retain the death penalty in law for drug-related offences, insufficient data are available regarding actual use to place them among these other groups of States.[7]

55. Insofar as figures for actual executions can be established, only between 8 and 15 States appear to put drug offenders to death. Since 2007, known executions have taken place in China, Indonesia, the Islamic Republic of Iran, Kuwait, Pakistan, Saudi Arabia, Singapore and Thailand. It is probable that executions for drug-related offences have also taken place in the Democratic People's Republic of Korea, Malaysia and Viet Nam. It is unknown, but possible, that executions for drug-related offences have occurred in Egypt, Iraq, the Syrian Arab Republic and Yemen.

56. These statistics support a conclusion similar to that reached for "most serious crimes" more generally. Only a minority of States Members of the United Nations (32 worldwide) retains the death penalty for drug-related offences in law, of which only between 8 and 15 actually carry out executions for them. These numbers indicate a broad consensus that States that maintain the death penalty as part of their law should not carry out executions for drug-related offences.

57. The special rapporteurs on health and torture have confirmed the view of the current mandate holder and the Human Rights Committee that the weight of opinion indicates that drug offences do not meet the threshold of "most serious crimes" to which the death penalty might lawfully be applied (E/2010/10, para. 67).

58. The nature of drug-related offences is conceptually unique and makes this category particularly vulnerable to arbitrary practices. Unlike murder, for example, drug crimes effectively criminalize action not for the grave consequences that it has had but for those believed to be likely. The causal connection is thus many stages removed and often even pre-empted by the drug-related arrest.

59. In domestic legislation, the range of related activities contemplated in this category is typically overexpansive and involves very different degrees of connection to drug trafficking. In some cases, it may also involve a presumption that

[8] Ibid.; and Amnesty International, *Death Sentences*.

possession of a threshold quantity of drugs is proof of trafficking, which is a capital offence and which the defendant must then disprove. As early as 1995, the Secretary-General noted that the threshold for a capital drug offence among retentionist States varied from the possession of 2 to 25,000 grams of heroin (E/1995/78, para. 55). In some States, many or even most death sentences and executions are for dealers in less dangerous drugs, such as marijuana traffickers.[7] Such discrepancies present additional concerns of arbitrariness.

60. There is no persuasive record that the death penalty contributes more than any other punishment to eradicating drug trafficking. In November 2011, the Secretary General of the Iranian High Council for Human Rights stated that:

> More than 74 per cent of executions in Iran are stemming from drug trafficking related crimes. Whether it is correct or not, there is a big question: "Did this harsh punishment bring the crimes down or not?" In fact, [it] did not bring it down.[9]

(e) Mandatory sentences

61. Legislation that leaves courts with no choice but to impose death sentences for specific crimes violates various human rights standards. A mandatory death sentence, even where killing was intentional, necessarily fails to take into account mitigating circumstances that might otherwise show the specific crime to be less serious (A/HRC/4/20, para. 55). A further problem is that mandatory sentences are often prescribed for crimes that do not meet the "most serious" requirement.

62. A mandatory sentence also undermines the separation of powers between the legislative and judicial organs of the State, at least in the context of capital crimes. The legislature essentially takes the judiciary's decision as to the most appropriate sentence in all like cases.

63. The Human Rights Committee has found that mandatory death sentences violate the "most serious crimes" provision (CCPR/C/70/D/806/1998, para. 8.2). Regional systems, including the African Commission on Human and Peoples' Rights, have likewise concluded that a death sentence may not be imposed without consideration of the circumstances of the offences and characteristics of the offender.[10]

64. Although at least 29 States retain a mandatory death sentence for specific offences, there is growing State consensus that it is unlawful as an arbitrary deprivation of life: at least 18 States have rejected it since 2008. A number of domestic courts have found a mandatory death sentence to be arbitrary and/or inhumane and therefore unconstitutional. Some have held it in violation of the rights to life and fair trial, and the principle of separation of powers.[11]

65. In addition, a handful of States, including Bangladesh, Guyana, India, Kenya, Malawi and Uganda, have recently turned against mandatory death sentences for specific crimes. The Deputy Prime Minister of Singapore has expressed opposition

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[9] Amnesty International, *Death Sentences*.

[10] *Interights et al. (on behalf of Mariette Sonjaleen Bosch) v. Botswana*, para. 31, African Commission on Human and Peoples' Rights, 2004; *Boyce v. Barbados*, paras. 57-63, Inter-American Court of Human Rights, 20 November 2007.

[11] See www.deathpenaltyworldwide.org/mandatory-death-penalty.cfm.

to its imposition for some minor drug-related crimes.[12] While the mandatory sentence should be eliminated for any and all potential capital offences, these developments are notably in the right direction.

(f) Conclusion

66. The notion of progressive restriction and the status of article 6 (2) as an exception suggest that States that wish to use the death penalty must provide a justification for this limitation on the right to life. The outlines of the global picture that can be discerned suggest that there is insufficient consensus to permit the inclusion of crimes other than intentional killing within the exception created for the "most serious crimes".

67. The first of the safeguards guaranteeing protection of the rights of those facing the death penalty should be understood to mean: "In countries which have not abolished the death penalty, capital punishment may be imposed only for intentional killing, but it may not be mandatory in such cases."[13]

D. Collaboration and complicity

68. The actual execution of a prisoner sentenced to death may depend on the collaboration of a web of actors beyond the executing State. Where the death penalty is imposed in violation of international standards, this assistance may amount to complicity and should lead to indirect legal or other responsibility on the part of the assisting party.

69. As a consequence of greater awareness of the risks of such complicity, State and other actors may decide not to collaborate in the pursuit of otherwise desirable common goals with States that maintain the death penalty. For example, one principal reason why the international criminal tribunals did not include death sentences in their statutes was to avoid jeopardizing the collaboration needed from abolitionist States and other actors.[14] Rwanda also factored those considerations into its abolition of the death penalty in 2007 so that it could receive persons suspected of involvement in the 1994 genocide for national prosecutions.

70. Other States, intergovernmental organizations and non-State actors, such as private-sector corporations and medical personnel, have assisted States in using the death penalty.

1. Assistance by States

(a) Transfer of persons

71. One form of State assistance with regard to the death penalty occurs through the transfer of persons to the jurisdiction of the executing State, such as through extradition, deportation, surrender, handover or any other form of enforced removal.

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[12] See http://app2.mlaw.gov.sg/News/tabid/204/Default.aspx?ItemId=676.

[13] Roger Hood and Carolyn Hoyle, *The Death Penalty*, 4th ed. (Oxford, Oxford University Press, 2008), p. 132.

[14] William A. Schabas, "Indirect abolition: capital punishment's role in extradition law and practice", *Loyola of Los Angeles International and Comparative Law Review*, vol. 25, No. 3 (2003).

72. International human rights law entails an obligation on States not to transfer people when State authorities know, or ought to know, that the individuals concerned would face a genuine risk of serious human rights violations, including arbitrary executions.[15] The international law principle of non-refoulement prohibits such a transfer in these situations and holds States, irrespective of all other considerations, responsible for all and any foreseeable consequences suffered by them.[16] This prohibition takes precedence over specific bilateral extradition treaties or other agreements, such as on mutual assistance in criminal matters, that may be in place (CCPR/C/48/D/470/1991, para. 13.1).

73. In the context of the death penalty, the application of the non-refoulement principle differs between abolitionist States and States that retain the death penalty in law.

74. States that have abolished the death penalty are absolutely prohibited from transferring a person when they know or ought to know that there is a real risk of the imposition of the death penalty (A/HRC/18/20, para. 45).

75. For States parties to the International Covenant on Civil and Political Rights in this category — that is, the majority — this prohibition applies irrespective of whether the requesting State complies with international standards in its use of the death penalty. It is also not dependent on whether the sending State has ratified the Second Optional Protocol, although it applies a fortiori to those that have ratified a treaty that specifically provides for the abolition of the death penalty.[17] The question of the State's intent is also immaterial; it matters only that the risk is foreseeable (CCPR/C/78/D/829/1998, para. 10.6, and CCPR/C/21/Rev.1/Add.13, para. 12). Transfer in violation of this prohibition amounts to an indirect violation of article 6 (1) of the Covenant by the abolitionist State, even though the requesting State, if it complies with all international standards, may not itself act unlawfully.

76. This absolute prohibition stems from the fact that States, once they have abolished the death penalty, are foreclosed from reinstating it (see CCPR/C/70/D/869/1999) and that only retentionist States can claim the exceptions provided under article 6 (2) (CCPR/C/78/D/829/1998, paras. 10.2-10.6). Assisting a retentionist State in its imposition of the death penalty therefore raises problems of inconsistency with the abolitionist State's obligation to protect the right to life. The Human Rights Committee concluded in *Judge v. Canada* that an abolitionist State would violate article 6 (1) not only if it were to reinstate the death penalty, but also if it were to transfer a person to a country where he or she would risk imposition of the death penalty, stating that, "for countries that have abolished the death penalty, there is an obligation not to expose a person to the real risk of its application" (ibid.,

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[15] See principle 5 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, set out in the annex to Economic and Social Council resolution 1989/65, and the jurisprudence of the Human Rights Committee in *Judge v. Canada* (CCPR/C/78/D/829/1998), para. 10.5, and *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), para. 6.9.

[16] See several decisions of the European Court of Human Rights in this regard: *Soering v. United Kingdom*, paras. 85 and 86, 7 July 1989; *Hirsi Jaama and Others v. Italy*, para. 115, 23 February 2012 (judgement of the Grand Chamber); and *Saadi v. Italy*, para. 126, 28 February 2008 (judgement of the Grand Chamber).

[17] See the concurring opinion of Judge Cabral Barreto in *Bader and Others v. Sweden*, European Court on Human Rights, 8 November 2005.

para. 10.4). Regional and domestic courts have reached similar conclusions.[18] In line with this approach, the Constitutional Court of South Africa affirmed in July 2012 that deporting individuals to a State in which they might face execution would violate the right to life of the persons concerned.[19]

77. For their part, States that retain the death penalty in law may transfer persons where there is a risk of the death penalty, but the transfer is lawful only where the requesting State adheres to all requirements imposed by international law, specifically but not exclusively those enshrined in articles 6 and 14 of the Covenant and in the safeguards guaranteeing protection of the rights of those facing the death penalty.[20]

78. If adequate and reliable, diplomatic assurances may render a transfer lawful in the context of the death penalty (E/2010/10, para. 9). For transferring States that have abolished the death penalty, assurances must be obtained that remove completely the possibility that the person would face the death penalty in the receiving State. Retentionist States must obtain assurances that the receiving State will impose the death penalty only in compliance with international law. In all cases, to render the transfer lawful, the assurances must comply with various standards, including making public the existence and terms of the assurance in line with the principle of transparency.

(b) Mutual assistance: provision of information and logistical support

79. States often assist one another in criminal and other matters by means other than the transfer of persons. Such assistance may include the provision of intelligence information, incriminating evidence or police assistance and investigation aid sufficient to capture the suspect; lethal drugs or materials for the execution; funds for projects such as drug control; and other forms of financial and technical support, for example to strengthen the legal system. These forms of inter-State cooperation may also raise questions of complicity where they contribute to the imposition of the death penalty in violation of international standards or issues of non-compliance with the assisting State's international legal commitments.

80. Human rights advocates have raised concerns that such assistance may facilitate capital sentences and/or executions[21] and identified specific cases in which such assistance appears to have directly or indirectly led to the capture of suspects later sentenced to death.[22]

81. The same legal principles apply here as in the case of transfer of persons: States that have abolished capital punishment may not assist in bringing about the death penalty in other countries, while States that retain it in law may support only its lawful imposition.[14]

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[18] See *Soering v. United Kingdom*, European Court of Human Rights, paras. 85 and 86.

[19] See *Minister of Home Affairs and Others v. Tsebe and Others, Minister of Justice and Constitutional Development and Another v. Tsebe and Others*, para. 73, Constitutional Court of South Africa, 27 July 2012.

[20] See the dissenting opinion by Human Rights Committee members Eckart Klein and David Kretzmer in *G.T. v. Australia* (CCPR/C/61/D/706/1996, appendix).

[21] See Amnesty International, *Addicted to Death: Executions for Drug Offences in Iran* (London, 2011).

[22] See International Harm Reduction Association, *Partners in Crime: International Funding for Drug Control and Gross Violations of Human Rights* (London, 2012).

82. Practices that show sensitivity to this issue include the elaboration in 2010 by the United States Department of Commerce of regulations to control the export of equipment designed for the execution of human beings, in addition to the decision of the European Union in December 2011 to block the export to the United States of specific drugs that could be used for lethal injections (Commission Implementing Regulation (EU) No. 1352/2011 of 20 December 2011 amending Council Regulation (EC) No. 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment).

83. That some States retain the death penalty for drug-related offences, in contravention of the "most serious crimes" requirement, raises the issue of balancing mutual assistance with non-violation of human rights standards. Concerns have been voiced, including from within the international drug control system, that such human rights abuses may undermine the integrity of the system.

84. Clear guidelines are needed to help States to engage in cooperative drug control efforts without departing from the human rights framework, including international standards on the death penalty. These guidelines should also assist in making operational the standards on State responsibility in this context.

85. Such guidelines are being explicitly sought by regional organizations that are major donors with regard to drug control efforts. For example, in a December 2010 resolution on the European Union's annual report on human rights and democracy in the world, the European Parliament called upon the European Commission to develop guidelines governing international funding for country-level and regional drug enforcement activities. Some individual States, such as Australia and the United Kingdom of Great Britain and Northern Ireland, are already developing domestic safeguards and guidance.

86. These examples demonstrate the need for a coordinated approach. They also represent positive progress in bringing external action into line with international standards, specifically those surrounding the death penalty and international legal responsibility (see article 16 of the draft articles on responsibility of States for internationally wrongful acts, prepared by the International Law Commission).

2. Intergovernmental level

87. The intergovernmental level involves many of the same considerations. With regard to the transfer of persons, the United Nations — bound by the principle of non-refoulement as a matter of customary law — and contributing States in multinational operations commonly follow the practice not to transfer persons if there is a risk of the death penalty.[23] Furthermore, the United Nations and other international organizations often assist in the crime prevention programmes of specific States and may likewise be implicated by involvement in unlawful executions.

88. Drug-related offences present one of the principal issues in terms of assistance concerns. The United Nations agenda includes action to curb drug use and other activities related to illicit drugs, in addition to the pursuit of human rights. When it comes to implementing coordinated programmes, in practice these objectives are potentially in tension. Indeed, the increase in the number of countries that provide

[23] Cordula Droege, "Transfer of detainees: legal framework, non-refoulement and contemporary challenges", *International Review of the Red Cross*, vol. 90, No. 871 (September 2008), pp. 669, 686 and 688.

for the death penalty for drug-related offences coincided with the adoption of international drug control treaties by many States.[24] As one commentator reflected, "those sentenced to death become a statistic in drug enforcement 'successes', while passing simultaneously into human rights statistics documenting ongoing abuse".[22]

89. While mixed messages were previously sent, the international drug control system now fully recognizes the need to ensure that drug control is pursued in a manner consistent with international human rights law, explicitly stating that the death penalty for drug-related crimes violates recognized norms. This has been made clear by the United Nations Office on Drugs and Crime (UNODC) on multiple occasions, including in 2010, when it called upon member States to follow international standards concerning prohibition of the death penalty for offences of a drug-related or purely economic nature (see E/CN.7/2010/CRP.6-E/CN.15/2010/CRP.1).

90. In 2012, UNODC introduced guidance in which it stated that in cooperative counter-narcotics projects it would seek assurances that international safeguards would be respected: "If, following requests for guarantees and high-level political intervention, executions for drug-related offences continue, UNODC may have no choice but to employ a temporary freeze or withdrawal of support."[25]

91. In its 2003 report, the International Narcotics Control Board referred to efforts by the United Nations to limit the scope of the death penalty to the most serious crimes (E/INCB/2003/1, para. 213). A number of scholars have, however, since criticized the Board for failing to clarify the balance of international responsibilities between drug control and human rights in the context of the death penalty.[26]

92. While the elaboration of guidelines points in the right direction, actual practice has not been sufficiently modified accordingly and remains a matter of concern. For example, UNODC and some States are actively involved in the Islamic Republic of Iran, where more than 1,400 people have reportedly been executed since the beginning of 2010, most of them on drug-related charges.

3. Non-State actors

93. While States are the primary duty bearers under international human rights law, there is an increasing awareness of the impact of non-State actors on human rights. In the context of the death penalty, they are part of the web that in some cases makes unlawful executions possible.

(a) Corporations

94. Corporations assist in the imposition of the death penalty by providing equipment and materials that States use to carry out executions. Where such executions are unlawful, this assistance raises questions of legal or other responsibility. International standards for the conduct of business and human rights have been established and are developing further. These include the Guiding Principles on Business and Human Rights, the Global Compact and the Guidelines

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[24] Amnesty International, "The death penalty: no solution to illicit drugs", October 1995. Available from www.amnesty.org/en/library/info/ACT51/002/1995/en.

[25] Available from www.unodc.org/documents/justice-and-prison-reform/HR_paper_UNODC.pdf.

[26] See www.hrw.org/news/2012/03/12/letter-international-narcotics-control-board-capital-punishment-drug-offences.

for Multinational Enterprises. Domestically, the law of the State of incorporation may establish corporate or individual (civil or criminal) liability for complicity, including extraterritorially, and harm to reputation has come to play a significant role in influencing corporate behaviour.

(b) Medical personnel

95. Around the world, medical associations have had to question to what extent their members, whose professional ethics require them to be healers and not executioners, may be involved in the implementation of the death penalty. This issue arises most regularly, but not exclusively, in the case of lethal injections, where medical personnel are often required by States to participate in the administration of lethal drugs and monitoring of the onset of death.

96. In a recent global study, it was said that: "Virtually all codes of professional ethics which consider the death penalty oppose medical or nursing participation. Despite this, many death penalty States have regulations specifying that health professionals be present at executions."[27]

97. It is clearly established under international law and codes of medical ethics that physicians and other medical personnel should not participate in torture or other cruel, inhuman or degrading treatment or punishment.[28] From the perspective of ethics, if medical personnel should not help to torture, there is good reason to imagine that they should not help to execute, at least not where such executions may violate international law. States should be cognizant of these considerations when they call for the presence or assistance of medical personnel when administering the death penalty.

E. Transparency

98. Transparency, or the public availability of information, is an underappreciated, yet crucial, aspect of ensuring compliance of the use of the death penalty with the protection of the right to life under international law. The requirements of transparency are likely to become increasingly significant as the world becomes more interconnected and international human rights law, in general, and scrutiny of the supreme right that is the right to life, in particular, develop further. The coherence and integrity of the international supervisory system is challenged when there are black holes in respect of which no information is available on the taking of lives, whether through judicial or extrajudicial killings.

99. The United Nations has over many years emphasized the importance of the public availability of information on the death penalty. Recently, the Secretary-General stated that the obligations of those States that continued to use the death penalty included the obligation not to practise the death penalty in secrecy

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[27] Amnesty International, "Execution by lethal injection", 4 October 2007. Available from www.amnesty.org/en/library/info/ACT50/007/2007.

[28] See, for example, General Assembly resolution 37/194, by which the Assembly adopted the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment; and the World Medical Association Council resolution on prohibition of physician participation in torture, adopted by the Council at its 182nd session, held in Tel Aviv, Israel, in May 2009.

(A/65/280, para. 72). This summarizes a long line of authoritative statements to the same effect within the United Nations system.

100. In 1989, the Economic and Social Council set out the minimum requirements of such transparency when, in paragraph 5 of its resolution 1989/64, it called upon all Member States:

> To publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law.

101. In paragraph 5 (c) of its resolution 2005/59, on the question of the death penalty, the Commission on Human Rights echoed this appeal. In its resolutions 62/249, 63/168 and 65/206, adopted in 2007, 2008 and 2010, respectively, the General Assembly again called upon all States that maintained the death penalty to provide the Secretary-General with information relating to the use of capital punishment and to make that information publicly available so that it could contribute to possible informed and transparent national debates.

102. A previous mandate holder has reiterated the importance of transparency wherever the death penalty is applied, noting that secrecy as to those executed violates human rights standards and that full and accurate reporting of all executions should be published, and a consolidated version prepared on at least an annual basis (E/CN.4/2005/7, para. 87). The Human Rights Council has repeated such calls during the sessions of the Working Group on the Universal Periodic Review, as have other mechanisms.

103. Three dimensions of the need for transparency in the context of the death penalty can be distinguished. First, sufficient and relevant information must be provided to those individuals who are directly concerned: the person who is to be executed and his or her immediate relatives, in addition to the defence lawyers to ensure effective representation at all stages. Second, the general public in the State in question requires transparency for informed public debate and democratic accountability. Lastly, the international community as a whole has an interest in supervising the observance of the right to life everywhere.

104. Various legal bases have been put forward as the source of these obligations, often linked to the rights of or obligations due to these three groups. In respect of prisoners, their families and the public, the realization of specific rights imposes a duty of transparency on States: the right to life, considerations of fair trial and the right of the public to information. At the domestic level, the right to information informs the broader set of rights to political participation. The obligation to be transparent to the international community also stems on a general level from the nature of international human rights supervision, which is impossible without reliable information. In many cases, information on the death penalty cannot be obtained from any source other than the State itself.

105. The starting point for transparency in all cases in which the lawfulness of killings is in question is the State's duty to investigate violations of the right to life.

Since the right to life is recognized as a rule of customary international law, the obligation to uphold it extends to all States, irrespective of treaty ratification. The obligation to uphold this right has been recognized to include not only protection from violations but also investigation into violations. As a former mandate holder has pointed out, transparency and accountability are part and parcel of the right to life under both article 6 of the International Covenant on Civil and Political Rights and customary law.[29] A lack of accountability for a violation of the right to life is itself a violation of that right, and transparency is an integral part of accountability. The Human Rights Committee has further concluded that failing to be transparent about the fate of an individual, including by withholding information from families about imminent executions, could itself constitute a human rights violation (see CCPR/C/77/D/886/1999 and CCPR/C/77/D/887/1999).

106. While transparency obligations in respect of extrajudicial executions must rely on provisions guaranteeing the right to life and the duty of States to investigate violations, transparency in judicial executions is also required by provisions concerning fair trial standards and, in particular, the general rule that hearings should not take place behind closed doors. Article 14 of the International Covenant on Civil and Political Rights and various parallel regional treaty provisions dealing with fair trial standards explicitly recognize the right to a public hearing and provide that any judgement rendered in a criminal case or in a suit at law is to be made public. A violation of fair trial rights during capital cases, including the openness of the trial to the public, can also constitute a violation of the right to life itself (CCPR/C/86/D/915/2000, paras. 7.5-7.6, and CCPR/C/39/D/250/1987, paras. 11.5 and 12.2). Accordingly, a State that fails to be transparent in its death sentences in line with article 14 risks also violating article 6.

107. Article 14 contemplates not only the prisoner's rights but also the public interest in information. States have a duty to make information on the death penalty publicly available in the aggregate and not simply buried in files in courts throughout the country (E/CN.4/2006/53/Add.3, para. 12). As a previous mandate holder has noted, for every organ of government and every member of the public to have at least the opportunity to consider whether punishment is being imposed in a fair and non-discriminatory manner, the administration of justice must be transparent, and the kind of informed public debate about capital punishment that is contemplated by human rights law is undermined if Governments choose not to inform the public (ibid.). The provision on fair and public trials also enables the public to scrutinize the work of a country's courts. Keeping any part of the administration of justice secret, including the imposition and carrying out of death sentences, risks undermining public trust in judicial institutions and in the legal process as such.

108. Article 19 of the Covenant also generates transparency requirements in recognizing not only freedom of expression but also public access to information. In *Toktakunov v. Kyrgyzstan*, the Human Rights Committee found that information about a State's use of the death penalty was of public interest (CCPR/C/101/D/1470/2006). The Committee consequently recognized a general right to gain access to that information deriving from article 19.

[29] Philip Alston, "The CIA and Targeted Killings Beyond Borders", *Harvard National Security Journal*, vol. 2, No. 2 (2011), p. 314.

109. The idea of a public right to information finds further support in the emergence of a right to truth. In the context of the death penalty, this would create the public's right to the information needed to establish whether deprivation of life is arbitrary or lawful.

110. In contexts other than the death penalty where transparency issues are raised, States often claim that secrecy is necessary to protect national security. The link between information on executions and national security appears tenuous at best, however. In cases of extrajudicial executions, States often answer calls for information with the claim that they lack the required information, whether because non-State actors are involved or because they lack the capacity to provide disaggregated data. Irrespective of its validity in other contexts, this is not a valid argument in death penalty cases because these executions are by definition performed by the State itself and the information required is straightforward. It is difficult to imagine a persuasive rationale by which States might withhold this information other than as an attempt to avoid international scrutiny.

111. Official information on the use of the death penalty was not available for a number of States in 2011. Figures were classified as a State secret in Belarus, China, Mongolia and Viet Nam. Information on the practices of the Democratic People's Republic of Korea, Egypt, Eritrea, Libya and Malaysia is reportedly difficult to find. In 2011, in Belarus and Viet Nam neither prisoners nor their families and lawyers were informed of forthcoming executions; in 2010, the same held true for Botswana, Egypt and Japan.[30] These States have been called to account for these failures during, among others, sessions of the Working Group on the Universal Periodic Review (A/HRC/WG.6/4/MYS/1/Rev.1, para. 89; A/HRC/WG.6/5/VNM/3, para. 10; A/HRC/WG.6/8/BLR/3, para. 20; A/HRC/WG.6/9/MNG/3, para. 22; A/HRC/WG.6/9/MNG/2, para. 22; and A/HRC/WG.6/11/SGP/3, para. 18).

112. One result of secrecy is that the positive developments that are increasingly taking place may not be given the credit that is due if their details are not public. For example, although China is typically given as an example as a result of its troubling practices, during the past few years there have been indications that its total executions have decreased dramatically.[31] Because these figures are State secrets, however, this assertion can neither be confirmed nor potentially commended.

113. Without reliable information, the international human rights system cannot function. In some cases, the international community has no advance knowledge of an imminent execution, rendering it ineffective in examining questions of lawfulness before execution. In others, the information is provided too late to take meaningful action. Over the years, mandate holders have had the disquieting experience of sending urgent appeals to Governments in great haste when they heard about an impending execution potentially in violation of international standards, only to learn a day or two later that the person had already been executed.

114. International practice over recent years has shown less tolerance for the unavailability of evidence in respect of alleged human rights violations. For example, the United Nations and regional treaty bodies increasingly accept allegations made in communications to be true when the State in question does not counter them. Likewise, where States do not submit State reports that are due, treaty

[30] Amnesty International, *Death Sentences and Executions in 2010* (London, 2011).

[31] See http://humanrightsdoctorate.blogspot.com/2011/12/china-and-death-penalty-signs-of.html.

bodies no longer pass them over. Instead, they may consider the situation in the States in question even in the absence of such reports and issue concluding observations on the basis of information that is otherwise available.

115. The concern raised in section D above is also of importance in this context. Access to information about other States' death penalty practices is necessary for States to decide how they wish to engage in inter-State cooperation and foreign relations and to avoid running afoul of their own international legal commitments or being complicit in another State's violations of the right to life.

IV. Conclusions

116. International human rights law places stringent constraints on the conditions under which the right to life may be infringed, either extrajudicially or judicially. Exemplifying general international law, the International Covenant on Civil and Political Rights allows a narrowly defined exception by which life may be taken by the State and envisages its progressive restriction. As a general rule, State practice supports this trajectory of restriction.

117. Nevertheless, in a shrinking group of States people continue to be executed in contravention of the standards imposed by international law. The right to life remains the right on which all others depend and requires the highest level of protection.

V. Recommendations

A. Retentionist States

118. States should heed the calls made by the United Nations and regional human rights bodies to establish a moratorium on executions with a view to abolishing the death penalty.

119. The death penalty may not be used where the highest level of compliance with fair trial and other international standards are not met.

120. Where there is evidence that may point to innocence, this should be reviewable at any time, including after the conclusion of the legal process. Wherever possible, States should enable access to information or technology that may assist in such reviews and should provide technical assistance to one another.

121. Military or other special jurisdictions should not have the authority to impose the death penalty.

122. Domestic law should provide that death sentences may never be mandatory and may be imposed only for those crimes that involve intentional killing. The death penalty may not be imposed for drug-related offences unless they meet this requirement.

123. States should amend national laws on extradition and deportation to specifically prohibit the enforced transfer of persons to States where there is a genuine risk that the death penalty may be imposed in violation of internationally recognized standards, unless adequate assurances are obtained.

124. States should ensure transparency regarding individual cases of capital prosecution, death sentences and executions, including access to information by prisoners, their family members and the public, as well as regarding the overall use of the death penalty, by making aggregated statistics publicly available.

125. States should respond in a timely fashion to urgent appeals by special procedures mandate holders regarding imminent executions.

B. Abolitionist States

126. De jure abolitionist States, where they have not done so, should amend national laws on extradition and deportation to specifically prohibit the enforced transfer of persons to States where they face a genuine risk of the death penalty, unless adequate assurances are obtained.

127. De facto abolitionist States, where they have not done so, should establish official moratoriums on executions and confirm such abolition in law.

C. All States

128. States should develop guidelines on the provision of financial or technical aid and mutual assistance, especially with regard to drug-related offences, to ensure that they do not support violations of the right to life.

D. International organizations

129. In collaboration with States, international organizations should develop guidelines, in addition to processes or mechanisms to make them operational, on rendering assistance to States that continue to use the death penalty, especially in the context of drug-related offences.

130. The first of the safeguards elaborated by the Economic and Social Council in its resolution 1984/50 on safeguards guaranteeing protection of the rights of those facing the death penalty should be understood to mean: "In countries which have not abolished the death penalty, capital punishment may be imposed only for intentional killing, but it may not be mandatory in such cases".

131. International organizations should continue to work on the issue of business and human rights, including through the Working Group on the issue of human rights and transnational corporations and other business enterprises. Wherever possible, they should help corporations to undertake to in no way assist the unlawful imposition of the death penalty.

132. International human rights bodies should pay specific attention to the issue of transparency in respect of the death penalty in retentionist States, including in the context of universal periodic review.

133. The Secretary-General should conduct a survey of all retentionist States to determine to what extent they comply with and realize the obligations of transparency.

134. **Regional human rights organizations should continue to pursue the issue of the abolition of the death penalty, in addition to complicity in unlawful practices. Emerging regional initiatives, such as the Association of Southeast Asian Nations, are encouraged to engage with the issue, including the matter of transparency.**

E. Non-governmental organizations

135. **Non-governmental organizations should remain seized of the matter of the death penalty and, in particular, should monitor scheduled executions and alert the international community in a timely fashion where there is reason to believe that an unlawful execution will take place. They should also monitor the issue of possible complicity by States and other actors in unlawful executions.**